



Federal Communications Commission
Washington, D.C. 20554

August 22, 2002

DA 02-1554

Via certified mail, return receipt requested

Mr. Joseph P. Gebhardt
250 South Martin
Zephyr Cove, NV 89448

Mr. John A. Prendergast, Esq.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Re: Final Default Payments for Auction No. 17

Dear Messrs. Gebhardt and Prendergast:

New Wave Networks, L.L.C. ("New Wave"), a participant in Auction No. 17, defaulted on the final payment required on two of the six B block licenses, B372 and B392, for which it was the winning bidder.¹ Auction No. 23, the subsequent auction for the licenses on which New Wave defaulted, has closed.² Therefore, in accordance with the Commission's rules, we are now able to calculate New Wave's final default payment obligations.³

Under the Commission's rules, a bidder who fails to remit the required down or final payment for a license for which it was the high bidder is subject to a default payment.⁴ Each default payment is comprised of two parts. The first component is the difference between the bidder's net defaulted bid and the net winning bid or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less, the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).⁵ The second component is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.⁶ If either bid amount is

¹ New Wave was the winning bidder on the following six markets: (1) B038 (Bend, OR); (2) B144 (Flagstaff, AZ); (3) B254 (Lihue, HI); (4) B371 (Redding, CA); (5) B372 (Reno, NV); and (6) B392 (St. George, UT). "LMDS Auction Closes," *Public Notice*, 13 FCC Rcd 18217 (1998) ("*Auction No. 17 Closing PN*"). New Wave failed to submit sufficient funds to cover the final payment for all six markets. However, as permitted by Commission rules, New Wave was allowed to selectively default on two licenses. Letter to John A. Prendergast, counsel for New Wave Networks, L.L.C., from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 14 FCC Rcd 6323 (1999) ("*New Wave Order*").

² "LMDS Auction Closes," *Public Notice*, 14 FCC Rcd 8543 (1999) ("*Auction No. 23 Closing PN*").

³ 47 C.F.R. § 1.2104 (1998).

⁴ 47 C.F.R. §§ 1.2109(c) and 1.2104(g)(2) (1998).

⁵ 47 C.F.R. § 1.2104(g)(2) (1998).

⁶ *Id.*

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subject to a bidding credit, the three percent (3%) will be calculated using the same bid amounts and basis (net or gross bids) as in the first component of the default payment.⁷ In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.⁸

With respect to New Wave's licenses, the Commission previously deducted an interim default payment for license B372 in the amount of \$14,124, and an interim default payment for license B392 in the amount of \$3,944 from funds on deposit with the Commission.⁹ The Commission retained the remaining funds on deposit pending assessment of the full default payment for licenses B372 and B392.¹⁰ As shown on Attachment A, in Auction No. 23, the subsequent auction of licenses B372 and B392, the winning bid amount of \$932,800 for license B372 was greater than New Wave's defaulted bid and the winning bid amount of \$237,600 for license B392 was greater than New Wave's defaulted bid.¹¹ Therefore, in accordance with Section 1.2104 of the Commission's rules, New Wave is assessed a final default payment with respect to license B372 in the amount of \$14,124 and a final default payment with respect to license B392 in the amount of \$3,944.¹² After applying the interim default payments, no outstanding balance is owed to the Commission.¹³ Accordingly, the Commission is prepared to refund the payor(s) of record, the \$31,182 remaining funds on deposit with the Commission. To obtain a refund,

⁷ *Id.*

⁸ *Id.*

⁹ Thus, after deducting the interim default payments for B372 and B392 and the final payment for four licenses (B038, B144, B254, and B371) \$31,182 remained on deposit with the Commission. *New Wave Order*, 14 FCC Rcd 6323 (1999).

¹⁰ *New Wave Order*, 14 FCC Rcd 6323, Attachment (1999).

¹¹ "LMDS Auction Closes," *Public Notice*, 14 FCC Rcd 8543 (1999) ("*Auction No. 23 Closing PN*").

¹² *New Wave Order*, 14 FCC Rcd 6323 (1999).

¹³ 47 C.F.R. § 1.2104(g)(2) (1999).

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the payor(s) of record¹⁴ must submit a request(s) in accordance with the instructions set forth in Attachment B.

This letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. If you have any additional questions or require further information, please contact Regina M. Martin in the Auctions and Industry Analysis Division at (202) 418-0660.

Sincerely,

Margaret W. Wiener, Chief
Auctions and Industry Analysis Division

¹⁴ See Entertainment Unlimited, Inc., Request for Refund of Late Payment Fees for PCS Licenses Purchased in Auction No. 22, *Memorandum Opinion and Order*, 16 FCC Rcd. 10,030 (2001) (noting that the Commission does not accept instructions regarding the refund of excess upfront payments from entities or individuals other than the payor of record).

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ATTACHMENT B

REQUESTING REFUND INSTRUCTIONS

In order to process refund requests, the FCC must receive wire transfer instructions that include the following information:

Name and Address of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Tax Identification Number
FCC Registration Number
Correspondent Bank (if applicable)
ABA Number
Account Number

Please include your Taxpayer Identification Number (TIN) and a copy of this letter. This information should be sent to the Auctions Accounting Group:

Federal Communications Commission
Auctions Accounting Group
Attn: Gail Glasser or Tim Dates
445 12th Street, S.W., Room 1-C863
Washington, DC 20554

Requests can also be faxed to the Auctions Accounting Group at (202) 418-2843.